United Nations CCPR/C/NPL/Q/2/Add.1

International Covenant on Civil and Political Rights

Distr.: General
31 March 2014

English only

**Human Rights Committee**
**110th session**
10 – 28 March 2014
Item 5 of the provisional agenda
**Consideration of reports submitted by States parties under article 40 of the Covenant**

# List of issues in relation to the second periodic report of Nepal

**Addendum**

# Replies of Nepal to the list of issues*

[24 January 2014]

## Constitutional and legal framework within which the Covenant is implemented (art. 2)

1. The National Human Rights Commission (NHRC), an independent Constitutional body, is mandated to ensure the respect, protection and promotion of human rights and their effective implementation. The constitutional mandate and jurisdiction of the NHRC is not restricted by any law including the National Human Rights Commission Act, 2012. The Act is in line with the constitutional provisions and international standards. The independence and autonomy of the NHRC guaranteed by the constitution are further elaborated by the Act. The NHRC enjoys structural, functional and financial independence in line with the Paris Principles. The chairperson and members of the NHRC are appointed by the President of Nepal on the recommendation of the Constitutional Council and upon parliamentary hearing. Their tenure is fixed for six years. They cannot be removed by any process other than the resolution of impeachment passed by the Parliament by a two-thirds majority. The money required for remuneration and facilities payable to the chairperson and members of the Commission and administrative expenses of the NHRC is charged on the Consolidated Fund. The NHRC is independent in maintaining necessary contacts and relations with national, regional and international organizations related to human rights; and in establishing its regional, sub-regional or liaison offices as may be required, in consultation

* The present document is being issued without formal editing.

with the Ministry of Finance. Likewise, the NHRC determines its organizational structure and forwards it to the Government of Nepal (GON) for consent. The GON ever remains supportive to the NHRC in its smooth functioning.

2. The GON is fully aware that the recommendations made by the NHRC are binding, and is doing its best to observe the duty to comply with those recommendations. The GON has always been implementing the decisions and recommendations of the NHRC. And as of November 2013, it has provided a sum of Rs. 95,024,828 (Nepalese Rupees) to the victims of decade-long armed conflict, for example, as compensation or interim relief. It is committed to effectively implementing the recommendations made by the human rights watchdog.

3. The provision concerning six-month limit for lodging a complaint to the NHRC in the cases of violation of human rights has been declared null and void by the Supreme Court of Nepal. The judgments and the interpretation of the Supreme Court are binding on all State organs and enforceable on a par with law. The GON is committed to submitting an amendment bill to the NHRC Act to give effect to the judgment of the Supreme Court.

4. The proviso of Clause 4 of article 132 of the Interim Constitution of Nepal, 2007 (Interim Constitution) empowers the NHRC to exercise the jurisdiction over the army personnel in cases of violation of human rights or humanitarian law. The NHRC is competent to investigate into the cases of human rights violations committed by army personnel. In practice too, it is exercising its jurisdiction over the army personnel who are under the domain of the Military Act. So, the question of amendment to the NHRC Act for extending its competence to investigate cases of human rights violations committed by army personnel is not relevant and necessary in this context.

5. Following the accession to the International Covenant on Civil and Political Rights by Nepal, the Covenant has been a part of its legal system as per Section 9 of the Nepal Treaty Act. The Supreme Court of Nepal has applied the Covenant in a number of cases particularly while making interpretation of the articles of the Constitution concerning fundamental rights. The Supreme Court has referred to the Covenant while declaring some specific provisions of national laws null and void in order to safeguard the right to life, gender equality, right against discrimination and right related to criminal justice. Some of the prominent Supreme Court cases can be cited as follows:

(a) Sapana Pradhan Malla vs. the GON. (Writ No 3561/ 2063, the court issued a guideline for the protection of the right to privacy of women victims in criminal proceedings);

(b) Amber Raut vs. the GON ( Writ no 0043 of 2066, the court issued directive order to the GON to constitute a committee in order to study the existing laws that give judicial power to the Chief District Officers to try criminal cases, and to change the laws in line with international standards).

(c) Chandra Kanta Gyawali vs. the GON (Writ No. 3342/2060, the court issued directive order to make necessary laws to protect the rights of senior citizens);

(d) Meera Dhungana vs. the GON (Writ No. 55/2058, the court issued directive order to criminalize marital rape to maintain gender equality);

(e) Tek Tamrakar vs. the GON (Writ No 121/2060, the court issued directive order to provide citizenship to the children of the *Badi* community);

(f) Devendra Ale vs. the GON (Writ No 57/2061, the court declared that any form of corporeal punishment against children is not permitted under any circumstance);

(g) Durga Sob vs. the GON (writ no 3643/2057, the court issued directive order to end caste-based discrimination and untouchability against *Dalit* community);

(h) Som Prasad Paneru vs. the GON (the court issued directive orders to make necessary laws and the policies against child labour);

(i) Bharat Mani Gautam vs. the GON (writ no 3455/2055, the court issued directive order to take action for prison reform).

6. The GON has established a mechanism and procedures for the implementation of the views and recommendations adopted and forwarded to Nepal by the Human Rights Committee as well as other treaty bodies. The Law and Human Rights Division of the Office of the Prime Minister and the Council of Ministers (OPMCM) is responsible for implementing, or gets involved in monitoring the implementation of the views/ recommendations of the treaty bodies. The Division is empowered to forward the views/recommendations to the line ministries concerned for implementation, and where the views warrants legislative reforms, policy formulation or substantial decision for implementation, it is forwarded to the Steering Committee, a body represented by secretaries of various line ministries and led by the Chief Secretary, for further consideration. The Steering Committee is mandated to determine the modality of the courses of action and, as per the requirement of the domestic system, any subject matter having policy implications is forwarded to the Council of Ministers for final decision.

7. The measures taken to ensure full compliance with the Committee's views in communication No. 1469/2006, Sharma v. Nepal, 1761/2008, Giri et al v. Nepal, 1863/2009 Maharjan vs. Nepal, are as follows:

(a) Provision of interim relief to the conflict victims or their family members as per the norms of the guidelines concerning interim relief to be provided to the victims;

(b) Promulgation of an ordinance on transitional justice mechanism for the investigation and fact-finding of conflict period cases;

(c) Instructions to the security forces to respect and protect human rights while discharging duties;

(d) Submission of some new bills such as bills on torture, penal code and civil code to the then Parliament;

(e) Inclusion of human rights education in training manual of the security forces.

8. The domestic law of Nepal provides a substantial foundation for investigation, prosecution and adjudication of the cases concerning the violation of human rights committed by both State and non-State actors. The GON has promulgated an ordinance for investigation and fact- finding in the cases of human rights violation that occurred during the conflict period. Likewise, regular criminal justice system is functioning over the cases of past human rights violation committed even during the conflict period. As per the instructions of the NHRC and the Supreme Court, crime investigation and prosecuting agencies are performing their respective duties in terms of investigation and prosecution. Some cases are pending in different courts while some are under the process of investigation.

9. After the issuance of an interim order by the Supreme Court of Nepal against some of the provisions of the Ordinance on Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2013, the implementation of this law was postponed. Recently the court gave its final verdict by issuing *mandamus* order to the GON not to implement the ordinance in status quo and to amend it in line with the spirit of its previous judgment in the case of Rajendra Dhakal vs the GON and international human rights standards. Similarly the court has declared some of the provisions of the ordinance null and void. So the implementation of this ordinance in status quo is not possible and it might take some time to establish transitional justice mechanism in the country. The GON is

committed to making further reform in the ordinance as per the order of the Supreme Court. Likewise, the newly elected Parliament is expected to make necessary enactment in line with the final verdict of the Supreme Court as well.

10. Every legal system of the world provides certain immunities to public office holders and even general public under specific circumstances while acting in good faith. Of course, the legal system of Nepal is not an exception to this. The immunity granted to the public office holders and citizens form criminal liability can be claimed by the persons concerned in the court of law which has exclusive power to decide over the matter under established principles of the immunity from criminal liability. Where the commission or omission of any public official or person amounts to serious violation of human rights, no one can enjoy any immunity from any kind of liability including criminal liability. No prevailing law of Nepal provides any type of immunity to public officials including security persons in cases of serious violation of human rights. Section 22 of the Army Act, 2006, Section 37 of the Armed Police Force Act, 2001, Section 26 of the Public Security Act, 1989 and Section 24(2) of the Essential Goods Protection Act, 1957 are not applied in serious violation of human rights and no court of law has granted any such immunity to any person who committed serious violation of human rights.

11. The power of withdrawing criminal charges granted by the State Cases Act, 1992 is just an exception which is executed only upon the consent of the competent court. Most importantly, it is applied only in a case having political nature and where it does not abrogate rule of law and principle of justice. In line with this underlying idea, the GON has framed a guideline on withdrawing criminal charges. Likewise, the GON holds consultation with the Attorney General before deciding to withdraw certain criminal charges from the court of law, and the legal opinion of the Attorney General is mandatory as per the verdict of the Supreme Court. The GON is committed to exercising this power only for the sake of justice.

12. Though a comprehensive vetting system has yet to be established, the legal system of Nepal is familiar with it. Various service laws including the Army Act, 2006, the Armed Police Force Act, 2001, and the Civil Service Act, 1993 provide the provision of terminating the service of a person who is convicted in a criminal charge amounting to moral turpitudes and serious violation of human rights such as wilful murder, rape, sexual violence and organized crime. Likewise, a person convicted on any of such charges is permanently disqualified to hold public office. In addition to this, the competent authority may take departmental action, which is different from a court proceeding, against the person who has committed serious violation of human rights. The departmental action includes, inter alia, suspension from the responsibility. Similarly, the Nepal Army and the Nepal Police have introduced a system of vetting of security personnel who are to be deployed on peacekeeping missions. Importantly, the GON is working to put in place a guideline for vetting to prevent those implicated in human rights violations from holding public offices as per the directive order issued by the Supreme Court of Nepal in 2012.

13. The legal system of Nepal criminalizes the commission or omission that amounts to war crimes, crime against humanity and genocide under international criminal law. Being a member of the United Nations and party to Geneva Conventions as well as various international human rights instruments, Nepal is competent to observe and apply those values and principles in its territory. Murder, rape, kidnapping, torture, slavery, and enforced disappearance are taken as serious crimes by the prevailing laws of Nepal. The Ordinance on Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2013 points out the following crimes as serious violation of human rights:

(a) Murder;

(b) Abduction and hostage taking;

(c) Enforced disappearance;

(d) Serious injury or mutilation;

(e) Physical or mental torture;

(f) Rape or sexual violence;

(g) Looting and arson;

(h) Enforced displacement;

(i) Any other act tantamount to crime against humanity under international human rights or humanitarian law.

14. Likewise, a bill on penal code submitted by the GON to the then Legislature Parliament incorporates almost all offences related to crime against humanity. Importantly, the Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs (MoLJCAPA) has formulated a bill ensuring measures for full compliance with the four Geneva Conventions. Since the signing of the Comprehensive Peace Agreement (CPA) in November 2006, Nepal has introduced numerous measures to provide reparation to the conflict victims. The measures can be cited as follows:

(a) Formulation of the national policy on internally displaced persons, 2006;

(b) Guideline on relief and facilities to be provided to internally displaced persons and their family due to conflict, 2006;

(c) Guideline on the operation of employment/self employment service for internally displaced persons, 2011;

(d) Decisions made by the Council of Ministers for rehabilitation, education, immediate relief, and special package of rescue for the victims;

(e) Skill development and income generation training for at least one female member per displaced family;

(f) Formation of the Steering Committee led by the Home Minister;

(g) Formation of a central programme coordination committee led by the Chief Secretary;

(h) District coordination committees led by the Chief District Officers;

(i) Internally Displaced Persons Identity Card Committee in each district;

(j) Interim relief to the conflict victims or their family members;

(k) Scholarship programme for the children of deceased;

(l) An action plan on the restoration and rehabilitation of the conflict affected children.

## Non-discrimination, equality between men and women, rights of minorities and indigenous peoples (arts. 2, 3, 26 and 27)

15. Since the promulgation of a democratic constitution in 1990, Nepal has accepted the principle of gender justice, gender equality and gender mainstreaming as one of the cardinal postulates of the governance system and development jurisprudence. Furthermore, the Interim Constitution treats the gender inequality and injustice as a key threat to inclusive democracy, sustainable development and rule of law. Therefore, a range of measures that can be categorized as constitutional, policy, legal, institutional and operational have been

adopted for protection, respect and fulfilment of human rights of women. Some of the important measures are as follows:

(a) National strategy and plan of action to end gender based violence and to promote gender empowerment, 2012;

(b) Gender equality and inclusion policy, 2010;

(c) The plan of action on the implementation of CEDAW;

(d) The plan of action against human trafficking;

(e) Gender sensitization for promoting societal awareness to gender issue and women's human rights and removal of all references derogatory to the dignity of women;

(f) Introduction of gender responsive budget;

(g) Enactment of various laws and amendment to existing ones;

(h) Introduction of positive discrimination, including reservation in civil, police military and other public services;

(i) Building and strengthening of partnership with civil society, particularly women's organizations;

(j) Changes in societal attitudes and community practices by active participation and involvement of both men and women;

(k) Criminalization of all forms of violence against women and the girl child;

(l) Strengthening of the access of women to health care, education, employment and social security;

(m) Preventive, punitive/corrective and promotional measures combating gender violence;

(n) Elimination of *Kamlari* practices;

(o) Awareness campaigning against social ill practices such as *Chhaupadi*, child marriage, the dowry system and superstitious accusation on witchcraft;

(p) Formulation of some important draft bills such as the bill against sexual harassment against women in work places and bill against witchcraft.

16. Positive discrimination has been an important strategic measure to maintain gender equality and for gender mainstreaming in Nepal. The major outputs of positive discrimination can be mentioned as follows:

(a) The representation of woman in civil service, Nepal police and Nepal army has been increased;

(b) Women constituted thirty-three per cent of the total membership in the erstwhile Constituent Assembly;

(c) Maternal mortality rate has fallen;

(d) Life expectancy of women has reached at 63;

(e) Literacy rate of women has been increased;

(f) Representation of women in judiciary has been increased.

17. The principle of equality and non-discrimination on any ground is enshrined in the preamble, fundamental rights and directive principles of the State in the Interim Constitution. Within the framework of democratic polity, the GON has taken several

measures to combat caste-based discrimination both in law and in practice which can be mentioned as follows:

(a) Promotion of societal awareness to *Dalit* issues and *Dalit*'s human rights;

(b) Use of different forms of mass media to communicate social message relating to *Dalits* human rights and their advancement;

(c) Social and economic support such as microcredit, free education, drinking water and sanitation, housing and shelter;

(d) Strengthening of the involvement of *Dalits* at the decision-making level in particular in programme management and project implementation;

(e) Positive discrimination including reservation in civil, police, military and other public services;

(f) Widespread dissemination of information on all aspects of the Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2011;

(g) The policy of zero tolerance against caste-based discrimination;

(h) Conduct of training and sensitization programmes for the officials of the law enforcement agencies;

(i) Focus on access to justice.

18. The National *Dalit* Commission, constituted by an executive order, has been receiving full support from the GON for the protection and promotion of human rights of *Dalits*. The GON provides necessary budget and resources to the Commission. Importantly, a proposed bill to upgrade the status of the Commission from an executive body to a statutory body is under consideration. The GON is committed to further strengthening the national human rights institutions including the National *Dalit* Commission.

19. Every citizen of Nepal has the right to live with human dignity which is guaranteed by the Interim Constitution. No prevailing laws of Nepal allow or promote any kind of discrimination against any religious community, indigenous people and *Madhesi* Community. Nepal has adopted various measures to address past injustice or discrimination made against indigenous and *Madhesi* Community. The measures can be mentioned as follows:

(a) Introduction of positive discrimination including reservation and quotas in public services;

(b) Quotas in proportional election seats of Parliament;

(c) Recognition of all spoken languages in the county as national languages;

(d) Secularization of the State;

(e) The rights of receiving primary education in mother tongues;

(f) The guarantee of cultural and religious rights;

(g) Easy access to citizenship;

(h) Investment of the Government in the protection and promotion of the culture, language, script and literature of the indigenous people and *Madhesi* community.

20. The fundamental rights guaranteed by the Interim Constitution are equally applicable, with some exceptions, to all individuals including non-nationals. Any person residing in Nepal may enjoy the right to freedom, the right against discrimination, freedom of expression, religious rights, the rights relating to criminal justice, right against preventive

detention, right against torture, right to privacy and right against exploitation, among others. The State cannot discriminate any persons including non-nationals on the ground of caste, descent, community or profession. The right to constitutional remedy guaranteed by the Interim Constitution is available for non-nationals also.

21. Any citizen of Nepal who has attained 16 years of age is entitled to obtain citizenship. The constitution and prevailing laws of Nepal explicitly negate discrimination of any kind against women in the access to citizenship. The Citizenship Act, 2006 maintains gender equality for the acquisition of citizenship. Article 8 of the Interim Constitution recognizes that Nepalese women can transfer their citizenship to their children and the children can obtain citizenship in the name of either parent. The 75 district administration offices have been directed by the Ministry of Home Affairs to provide citizenship in the name of mother also. Likewise, the GON from time to time has distributed citizenship cards to people by deploying mobile teams.

22. Discrimination on any ground including sexual orientation and gender identity is prohibited by the constitution and laws in Nepal. The GON is committed to end any type of stigmatization and discrimination against any person on the basis of sexual orientation and gender identity even in private life. In implementing the judgment of the Supreme Court in the case of Sunil Babu Panta vs. the GON (writ no. 917 of 2064 BS), Nepal has, since 2007, officially recognized the third gender category on various documents and laws. As per the amended provision of the Citizenship Rule, 2008, any Nepalese citizen who falls under the category of third gender may obtain citizenship certificate by indicating the term 'others' instead of male or female. Likewise, the term 'others' has been used in various documents such as voters' identity cards, census forms, and mountain trekking permit forms. So, any person having distinct sexual orientation other than male or female has the right to be introduced in official documents under 'others' category. The Ministry of Home Affairs in 2012 has issued a circular instructing all 75 district administration offices to provide citizenship certificates to the third gender by recognizing them as 'others'.

## Violence against women, including domestic violence (arts. 2, 3, 6, 7 and 26)

23. Nepal takes violence against women as multiple violations of human rights and a key threat to justice, peace and sustainable development. Therefore, various measures have been adopted to combat such violence. All forms of violence against women have been criminalized, and the law enforcement agencies and courts of law are responding to the cases of violence against women effectively. The access of victims to justice is being gradually strengthened. The GON does not accept that impunity prevails in the cases of violence against women. The police have been instructed to register complaints and to conduct investigation as per the provision of law. The rising number of complaints lodged by the victims of gender violence clearly shows that their trust in the justice system has gone up.

24. The GON has adopted the following measures to prevent and combat all forms of violence against women:

(a) Criminalization of all forms of violence against women;

(b) Establishment of the Women and Children Service Directorate at the Nepal Police Headquarters and women and children cells in all district police stations;

(c) Campaign against traditional practices that promote violence against women;

(d) Conduct of the gender sensitization and women empowerment programmes;

(e) Rescue and rehabilitation of victims;

(f) The provision of *in camera* hearing in trial;

(g) Establishment of Service centres/Restitution centres;

(h) Institutional framework from centre to grassroots level;

(i) Review and amendment to discriminatory laws;

(j) The programmes relating to gender mainstreaming;

(k) Adoption of the Gender policy, 2012 by Nepal Police;

(l) Hospital based one-stop-crisis management centres in 15 hospitals.

25. The domestic law of Nepal considers rape as a serious violation of human rights. Anyone who commits rape is liable to imprisonment for 16 years, to a maximum. No one can enjoy immunity from criminal liability in rape cases. So far as the 35-day statutory limitation for filing a criminal complaint (FIR) is concerned, a bill to amend the existing law was submitted to the erstwhile legislature-parliament. However, due to the expiry of the term of the then parliament the bill could not translate into law. The GON is committed to repealing such strict limitation to file an FIR on rape.

26. Service centres have been established in 15 districts for the victims of domestic violence and the eight rehabilitation centres for the victims of human trafficking. Similarly, hospital based one-stop crisis management centres have been established in 15 districts. Likewise, rehabilitation and service funds have been established at the central level, and all 75 districts have Gender Violence Elimination Fund.

## Right to life and prohibition of torture and cruel, inhuman or degrading treatment or punishment (arts. 2, 6, 7, 9, 10, 16, 19 and 21).

27. The Interim Constitution has explicitly recognized the right to life as a fundamental right of each person. Any unlawful use of force and violation of the right to life by State or non-State actor is punishable under the domestic law of Nepal. The Local Administration Act, 1971 and other relevant legislation comprehensively provide for how, in the course of enforcement of laws, minimum force is exercised to tackle a situation. Law enforcement officials may use reasonable force for safeguarding life and property of the people and maintaining peace and security. Law enforcement officials having the power of using force have been provided the training and awareness about the provision and spirit of the law. Extrajudicial killing is a crime under the prevailing law of Nepal and the GON has issued strict directives to all agencies concerned to protect human lives and punish those who commit such heinous crimes or are responsible for the commission of such acts. Likewise, some of the acts that amount to enforced disappearance such as kidnapping, abduction, and unlawful detentions have already been criminalized, and any person including security personnel is not immune from the ambit of law and justice. Any person including victim or his/her representative can lodge complaint to the competent authority against the alleged offender. The security personnel practicing unlawful use of force against public are accountable to law, and such accountability may result in departmental action or criminal charge as per the nature of the commission of offence. The GON is committed to conducting prompt and impartial investigation and bringing the perpetrators to justice. As the country is in a transitional phase and facing difficulties of prioritizing, there might have been some weaknesses but these cases would be addressed gradually. The entire State system should not be undermined and brought under blanket criticism. Any official acting beyond his or her jurisdiction in contravention of law is personally liable and the State

machinery is competent to bring such official under the purview of justice. The GON does not justify extrajudicial killing on any ground and circumstances. Under the domestic law of Nepal, extrajudicial killing like murder or homicide is classified as State Case to which the State takes responsibility of investigation and prosecution under the State Cases Act, 1992. Any person on behalf of the victim can lodge first information report (FIR) at the nearby police station in case of extrajudicial killing. If the concerned official fails to register the FIR, the complainant can move to the higher officer or the Chief District Officer (CDO), and even to the court of law requesting *mandamus* against the official concerned. In addition, the Interim Constitution empowers the Attorney General of Nepal to examine the detention centre whether the detainee is facing any inhuman or degrading treatment or not. Likewise, the NHRC can, under the exercise of its wider mandate, conduct a range of inquires and investigations into the allegation of extrajudicial killing and unlawful use of force. Similarly, probe committees, from time to time have also been constituted to investigate into various allegations or cases concerning the violation of human rights by security personnel under the Inquiry Commission Act, 1970, and the reports of such committees have been implemented.

28. Orientation and imparting of human rights education to the security forces are being undertaken in an institutionalized manner. The Nepal Police, Armed Police Force and Nepal Army have designed effective curriculum for law enforcement officials. The curriculum includes, inter-alia, international human rights and humanitarian law and the principles on the use of force and firearms. The security personnel have been given training and orientation to maintain restraint in the use of force while exercising power in the course of law enforcement, and they are required to respect and protect human rights of every person while discharging public duties.

29. The GON would like to draw the attention of the Committee that the legal system of Nepal is not unaware of the norms and principles of torture and enforced disappearance. Most of the offences that constitute torture have been criminalized by the domestic law of Nepal. Any kind of unlawful use of force, beating, serious injury, sexual offence against a detainee by any person including public office holder are punishable under the laws of Nepal. The General Code (Muluki Ain) is applicable to such acts committed by any one. It is to be noted that the Torture Related Compensation Act, 1996 is an attempt to take into account the heinous acts of torture from the point of view of victims even though it does not explicitly criminalize torture and deals only with the issue of compensation and departmental action against the perpetrators. Importantly, a separate bill to cover the issue of criminal liability of perpetrators and reparation to the victims was submitted to the then Legislature-Parliament by the Government of Nepal. Similarly, a bill on penal code was under consideration in the previous Parliament which covered torture among others.

30. Likewise, some of the acts that constitute enforced disappearance have also been criminalized by the domestic law of Nepal. Kidnapping, abduction and illegal detention are serious crimes under the prevailing laws of Nepal, though a comprehensive law on enforced disappearance is yet to be enacted. Nepal is committed to enacting a law criminalizing the offence of enforced disappearance in accordance with international standards and ensuring that allegation of enforced disappearance, torture and cruel, inhuman or degrading treatment or punishment are effectively and impartially investigated. After the signing of the CPA between the then Nepal Maoist Party and the Government of Nepal in November 2006, not a single case of enforced disappearance has taken place. The offence of enforced disappearance committed by the both State and non-State actor during the time of conflict has been taken as a serious matter and the transitional justice mechanism that is going to be established at the earliest will be equipped to fully address the issue.

31. The GON is seriously concerned with the reports that allege that torture has been and continues to be systematically practiced in Nepal. The reports are biased in that they

represent one sided views only. They fail to acknowledge the positive developments made towards ending torture. It must be understood that any kind of torture and cruel, inhuman or degrading treatment of a detainee in police custody is prohibited by the Interim Constitution and relevant laws of Nepal. Had there been systematic torture in the State machinery, characters such as torture as a regular strategic means for investigation of an offence, widespread practicing of torture, institutionalization of torture, structural and functional protection of the offenders of torture by State actors, and the absence of watchdog that rings the bell against the cases of torture would have been prevailing in the country. However, this is not the case. Nepal is among the first countries in south Asia that became party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The right against torture is guaranteed in the Interim Constitution. The GON has pursued a zero-tolerance policy against torture. The NHRC has a wide mandate to conduct investigations into the allegations of torture committed by law implementing officials. Likewise, Nepal is committed to investigate into the serious violation of human rights including torture and ill-treatment committed by State as well as non-State actors during the time of armed conflict through the regular criminal justice as well as transitional justice mechanism.

32. As per the provision of the Torture Related Compensation Act, 1996, any official found guilty of torturing a person, is liable for departmental action also. In line with this provision, the Army Act, 2006 also provides departmental action for military personal involving in the offence of torture. The military court has the power to impose various forms of departmental actions against perpetrators which includes subjecting to ultimatum, warning, freezing of promotion, freezing of salary up to the recovery of the losses, denial of seniority up to one year, subjecting to force up to an equivalent of fourteen days payment in a month, and removing from the serving post. Likewise, the person found guilty of torture has been prevented from participating in the United Nations peacekeeping missions. Similarly, as per the decisions of the competent courts, the GON has provided compensation to the victims of torture in many cases.

33. The Army Act, 2006, the Police Act, 1955, the Armed Police Force Act, 2001 and their respective regulations regulate the conduct of security forces. Besides this, the Local Administration Act, 1971, and the National Parks and Wildlife Conservation Act, 1973 also prescribe certain standards on the use of force by law implementing officials. Any security personnel who commits any act in contravention of the Act and Rules concerned has to face civil, administrative and even criminal liability as set forth in the law. Similarly any person whose human rights are violated by the conduct of security forces can move the NHRC and even the court of law for remedy. Moreover, by exercising the power to constitute an independent probe commission on any matter of public importance or concern, the GON can form such commission for fact finding and recommending on a particular case of human rights violation committed by security forces as well as non-State actors.

34. Nepal is committed to enacting a new law in line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment so that any kind of torture inflicted on any person is investigated more effectively and the offence of torture is included as a State case. In line with this, a comprehensive bill on the criminalization of torture was submitted to the then Legislature Parliament. The newly elected constituent assembly is expected to translate this bill into law.

35. Corporal punishment is explicitly prohibited under the prevailing law of Nepal. The Interim Constitution, like its predecessor, has abolished death penalty and consequently the sentence to death is not a part of the penal system in Nepal. Nepal has also acceded to the Second Optional Protocol to the ICCPR, aiming at the abolition of death penalty. Any kind of corporal punishment is punishable by law. The General Code criminalizes the offences of hurt, battery or any other forms of corporeal punishment. Similarly the Torture Related

Compensation Act, 1996 prohibits torture and ill treatment. Likewise, the Children Act, 1992 explicitly prohibits the offence of torture against children. So far as the proviso of the Section 7 of the Children Act, 1992 is concerned, the Supreme Court in 2003 ruled that the provision was unconstitutional and declared the term 'minor beating' null and void. The provision of Section 4 of chapter 9 on hurt of the General Code which reads "if a person who has a duty to protect or give education to somebody else causes injury to the victim upon using a reasonable minimum amount of force, the act of causing injury shall not be deemed to be the offence of hurt in the given situation" does not justify corporal punishment. Furthermore, the Domestic Violence (Crime and Punishment) Act, 2009 criminalizes all kinds of physical torture committed by any person in family. Likewise, the guidelines for Operation and Management of Residential Children Homes, 2012 prohibit torture in residential institutions. The Abrogation of Some Criminal Cases and Remission of Punishment Act, 1963 explicitly prohibits a number of cruel and humiliating punishments. The National Children Policy adopted in 2012 aims at ending all kind of corporal punishment at school and other institutions as well as in family. The government is committed to implementing the recommendations concerning the protection of the rights of the child made by the human rights treaty bodies and under the Universal Periodic Review (UPR) mechanism. In line with this, the government expedites the process of amending the relevant provisions of the Children Act and other laws to ensure full compliance with article 19 of the Convention on the Rights of Child. Awareness raising campaigns are conducted on a regular basis to sensitize the parents and professionals working with children as well the public at large about the prohibition of corporal punishment and ill treatment of children.

## Elimination of slavery and servitude (art. 8)

36. The present framework of laws relating to human trafficking in Nepal is very progressive and effective. Article 29 of the Interim Constitution guarantees the right against exploitation and explicitly prohibits human trafficking, slavery or bonded labour even in the name of custom, tradition and practice. Human Trafficking and Transportation (Control) Act, 2007 criminalizes the offence of human trafficking and transportation, and makes important provisions on protection, rehabilitation and restitution of victims. Likewise, Human Trafficking and Transportation (Control) Regulation, 2008 provides for the formation of committees at national and district levels to prevent and combat human trafficking. The GON is implementing a plan of action against human trafficking. The Office of the National Rapporteur on Trafficking in Women and Children (ONRC) has been established within the NHRC which has conducted several advocacy programs and trainings on trafficking as well as safe migration.

37. The Interim Constitution and other relevant laws such as the Bonded Labour (Prohibition) Act, 2002, the Child Labour (Prohibition and Regulation) Act 1999, and the Children Act, 1992 explicitly prohibit any forms of forced and bonded labour. The GON abolished traditional practices of bonded labour such as *Haliya* and *Kamaiya* in 2058 BS. Recently, the GON also abolished the practice of *Kamlari*. Bonded labour does not exist in Nepal in an institutionalized way. The GON has been implementing various schemes such as distribution of plots of land, micro-credit loan service, income generation activities, and rehabilitation and employment for the restoration and rehabilitation of freed bonded labourers.

38. The person who practices bonded labour, forced labour or child labour is liable to punishment as provided by the law. Though the Child Labour (Prohibition and Regulation) Act, 1999 explicitly prohibits child labour particularly for those below 14, the GON is working to draft a bill on domestic servitude also.

39. Though disaggregated data by sex, age, ethnic group, and rural/urban areas for the investigation, prosecution and conviction are yet to be collected, the GON would like to reiterate that it is effectively implementing the laws and policies made against human trafficking and bonded labour. Despite facing numerous constraints of poverty and other problems, Nepal has made significant progress in eliminating slavery and servitude.

## Right to liberty and security of person, treatment of persons deprived of their liberty, fair trial and independence of judiciary (arts. 2, 7, 9, 10, 14 and 24)

40. Arbitrary and unlawful detention and holding detainees in unofficial places of detention are prohibited under the domestic law of Nepal. No prevailing laws of Nepal empower police to arrest a person arbitrarily. The arrested person has the right to know the reason of arrest, one of the fundamental rights guaranteed by the constitution. The GON has strictly instructed security forces not to arrest any person in an arbitrary and unlawful manner. Training, orientation and sensitization programmes on the use of force have been regularly conducted for security personnel. In case arbitrary and unlawful detention takes place, there are various institutions like the courts of law, the NHRC, and the Office of the Attorney General to address the matter. Non-governmental organizations and human rights defenders are also there in the large numbers who play the role of whistleblowers when such incident occurs.

41. According to the Police Act, 1955, the State Cases Act, 1992 and the General Code, 1963, it is a duty of police to keep accurate records of detention which includes the dates of arrest. The allegation that most commonly the date of arrest is falsified in the register in an attempt to circumvent the constitutional requirement to bring detainee before a court within 24 hours is not true as it does not establish that security forces use it in an institutional manner. If it is found that the date of arrest is falsified by any police personnel in record, the concerned official is liable to departmental action. The GON is committed to taking action against those officers involved in such activities. The Nepal Police has adopted measures to prevent arbitrary and unlawful detention, including falsification of records or keeping inadequate custody records. Such acts are checked and investigated. Human rights cells have been established in the offices of security forces to prevent such activities.

42. The right to legal counsel of one's own choice is one of the fundamental rights guaranteed by the Interim Constitution. The person who is arrested has the right to consult a legal practitioner of his/her choice at the time of the arrest. No hurdles persist for the enforcement of this right and the GON is committed to making necessary arrangement for the enjoyment of this right by detainee and necessary instruction has been given to Nepal police to give effect to this. Likewise the Attorney General is empowered constitutionally to give necessary direction to the relevant authorities to allow the detainee to meet his/her relatives or lawyer.

43. The allegation that lengthy pretrial detention is common is not based on reality. The Interim Constitution and other relevant law of Nepal recognize the right of each person who is arrested to be produced before a judicial authority within a period of twenty four hours after such arrest, excluding the time necessary for the journey from the place of arrest to such authority. Most importantly, the arrested person cannot be detained in custody beyond the period except on the order of such authority. When the remand is requested by the investigating agency, the court can pass an order of remand for a period not exceeding 25 days and such remand may be given through one or repeated orders. According to the State Cases Act, 1992 the extension of the remand period is subjected to cause and grounds. The Supreme Court has laid down a principle that an extension of remand should be granted only after the physical production of the suspect. It is to be noted that the investigating

authority cannot claim the period of 25 days as a right. The judicial authority has power to give instruction to the investigating authority to complete the process of investigation within a given time. And the situation has gradually been changed with the intervention of the judicial authority.

44. Though neither the State Cases Act, 1992 nor other prevailing laws of Nepal allow police to release the arrested person from police custody on bail, no legislation of Nepal provides the provision for compulsory detention to conduct investigation. The police must have sufficient reasons to arrest a person in the course of investigation of an offence. Likewise, the State Cases Act, 1992 makes the provision that the police may release the detainee from custody on condition where such person makes a commitment in writing that he or she appears before such authority as and when necessary. This provision has been implemented basically when it needs further investigation to collect evidence. Likewise, non-custodial alternative measures to pretrial detention are applied in some important cases like corruption as per the provision of domestic law.

45. The GON is working towards the reduction of overcrowding in prisons. Exploring alternatives to imprisonment for some categories of offenders has already been put in place. The Prisons Act, 1964 has introduced the concept of open prison and community service by the offender in some cases. Likewise, the GON is very serious about the weak infrastructure and inadequate facilities available in prison. As most of the jails were constructed more than 50 years ago, the GON is expanding the prison capacity to cope with the growing number of inmates and new buildings are being constructed in Nakhhu, Dhading, Bhimphedi, Pokhara, Dang, Chitwan and Myagdi. And it is expected that the construction work would be completed within three years. Physical facilities of prisons are being upgraded. The GON is committed to provide basic services and facilities to prisoners including sanitation, and medical care.

46. Under the prevailing law of Nepal, national monitoring mechanism of the detention centres exists and has come into practice. The NHRC can visit the places of detention and monitor custody records maintained by the police, as well as services and facilities available to prisoners. The human rights watchdog is empowered to recommend to the GON for jail reforms and to take action in case of violation of human rights committed by the concerned authority. Likewise, the Attorney General is empowered, on the basis of complaints or information received by him or her by any means, to investigate allegations of inhuman treatment of any person in custody or denial to meet his/her relatives directly or through lawyer and give necessary directions to the relevant authorities to prevent the recurrence of such incidences. In addition to this, the concerned Chief District Officer, and officials of the Ministry of Home Affairs and the Department of Prison Management can monitor the prisons and detention centres. Importantly, by exercising the power given by the Administration of Justice Act, 1991, the concerned appellate court judges visit and inspect prisons and give necessary directions or recommendations to prison authority concerned at least once a year. Similarly parliamentarians and human rights activists also from time to time visit jails to observe the prevailing conditions.

47. The Prisons Act, 1964 and the Prisons Regulation, 1965 have been amended from time to time as a part of the reform in criminal justice system in Nepal. The second amendment to the Prisons Act made in 2007 has introduced the concept of open prison and community prison system. If a prisoner is sentenced to more than three years imprisonment and serves one third of that sentence, such prisoner can be sent to open prison. A person who is sentenced to less than four years imprisonment, can be sent in community service to serve the sentence by the adjudicating authority. The Prison Regulation makes detail provision for the implementation of the concept of open prison and community service system. A taskforce formed to study physical and management aspects of prisons in the country has recommended the government to implement the concept of open prison

introduced by the prison legislation. The GON is carrying out a feasibility study to implement the concept of open jail. The Department of Prison Management is working to materialize the concept of open prison. It has planned to construct open prison complex in Nepalgunj in the near future.

48. As per Section 21 of the Prisons Act, 1964, if any detainee or prisoner submits a plaint, note of deference, appeal, petition, application, information etc. as required to be filed by him/her in any office or court in respect of any case or law suit to the prison office where she/he has been d tained or imprisoned for the purpose of filing the same with such office or court, the priso office shall, within three days, forward the same to the office or court where the same is to be forwarded to. The right guaranteed by the Act is being exercised by the detainees or prisoners, and there is no obstacle or hurdle to submit the complaints by the inmates to courts of law against torture, cruel, inhuman or degrading treatment or punishment.

49. Due to the expiry of the term of the Legislature-Parliament, the bills on penal code, criminal procedure code and sentencing legislation submitted to the house, could not translate into law. The GON is committed to submitting these bills again for the consideration of the house. Obviously, these bills propose some of the major amendments for the modernization of criminal justice system which includes fair trial, which can be mentioned as follows:

(a) Principles of criminal justice are incorporated in the code;

(b) Prohibition and criminalization of torture;

(c) Compulsory lawyers representation in remand proceeding;

(d) The provision of arrest warrant to be executed by the court;

(e) Oversight of government prosecutor over investigating authority;

(f) Introduction of the concept of the plea bargaining.

50. The Evidence Act, 1974 and the State Cases Act, 1992 do not compel a detainee to testify against himself/herself or confess guilt before investigating, prosecuting or adjudicating authority. Section 9 of the Evidence Act clearly states that evidence obtained from the accused of a criminal case by putting pressure on him/her or with torture to him/her or with a threat to torture to him/her or any other person or putting him/her in a condition to express the fact against his/her will is not admissible in a court of law. The right against self-incrimination and the right to silence of the accused are guaranteed by the Interim Constitution. Likewise, the Evidence Act also states that where the public official, while conducting a process, gives any threat or promise in relation to any charge, by which there was a possibility of expressing any untrue fact and the person had believed that such official had a power and authority to implement the threat or promise, the evidence or fact collected in such a manner is not admissible to the court. Therefore, no prevailing law of Nepal violates the basic principle of fair trial in terms of admissibility of evidence.

51. The national anti-corruption jurisprudence covers all of the State organs including judiciary and public officials including judges within its ambit for good governance. The Prevention of Corruption Act, 2002 applies even to judges. As a party to the United Nations Convention against Corruption, Nepal has adopted constitutional, legal, policy and institutional measures to combat and fight corruption in the county in line with its provisions. Bearing in mind the independence of the judiciary, the State of Nepal has taken measures to strengthen its integrity and to prevent possibilities of corruption among members of the society. The judicial council, a constitutional body headed by the Chief Justice of Nepal, is mandated to investigate into the complaints against any judge of appellate court or district court who is alleged to have indulged in corruption, and upon

inquiry and investigation the judicial council is empowered to file charge sheet against such judges in appellate court. The Judicial Council Act, 1991 makes detail provision on removal of judges. Likewise, the Act empowers the judicial council to take other actions such as warning or other type of departmental action against the judges who are involved in abuse of power. The chief justice, on the recommendation of the judicial council, may remove any judges except the judges of the Supreme Court on the grounds of incompetence, misbehaviour, failure to discharge the duties in good faith or deviation from justice. Likewise the Supreme Court has issued a code of conduct for judges to maintain a free, fair and transparent judiciary. In addition to this, the judiciary is implementing a strategic action plan of judiciary to build competent and effective judiciary.

52. The structural, functional and individual independence of the judiciary and judges is guaranteed by the Interim Constitution as one of the basic structures of the constitution. Nepalese judiciary is independent, competent and effective. The judicial power of State is vested upon the judiciary. Nepal's judiciary dispenses justice according to the constitution, law and recognized principles of justice without any outside interference including that of political leaders.

53. The Interim Constitution clearly states that it is the duty of all to abide by the orders and decisions of the court. The GON is obliged to implement the verdicts and orders of the court, and bearing the constitutional and legal duty in mind, the GON has adopted the following measure for the implementation of the court decisions.

(a) Various decisions of the Council of Ministers have facilitated the swift implementation of the court decisions in particular in the PIL cases;

(b) Establishment of the judgment execution sections in each line ministries.

(c) Establishment of a monitoring committee in the Office of the Prime Minister and the Council of Ministers (OPMCM);

(d) Establishment of a steering committee headed by the Chief Secretary;

(e) Publication of the annual report on the status of the implementation of the Supreme Court decisions;

(f) Interactions and meetings between the secretaries of the government and the court officials including judges;

(g) Development of networking between the ministries and the Judgment Execution Directorate of the Supreme Court;

(h) The GON has been implementing the orders and decisions of the courts effectively.

54. Nepal has taken a range of measures to cope with the delays in administration of justice. These measures can be cited as follows:

(a) Introduction of the strategic plan in judiciary from 2004;

(b) Amendment to the Administration of Justice Act, 1991 to reduce the backlog of cases in the Supreme Court;

(c) Introduction of the concepts of alternative dispute resolution including mediation/court referred mediation/court annexed mediation and community based mediation;

(d) Implementation of the concept of case flow management by the judiciary;

(e) Introduction of the concept of continuous hearing in some particular cases as provided for in the District Court Rules, 1993;

(f) Continuous increase in the allocation of budget to the judiciary;

(g) Establishment of the Justice Sector Coordination Committee.

55. The Interim Constitution guarantees the right to consult and to be defended by a lawyer of one's own choice and the right to free legal aid for indigent persons as fundamental rights. The GON has been providing legal aid to poor, marginalized and deprived people since 1970. It bears the cost of stipendiary lawyers working in the Supreme Court, and each appellate and district courts. Likewise, after the enactment of the Legal Aid Act, 1997 and Legal Aid Rules, 1998, legal aid is covered in all 75 districts since 2009. Legal aid committee established in each district courts and appellate courts takes the responsibility of providing legal aid to the poor and marginalized groups. Importantly, it is working to materialize the right to legal aid and access to justice for all needy.

56. Some of the Nepalese Acts empower the Chief District Officers (CDOs) to try and dispose even some criminal cases such as arms and ammunition related ones. After the restoration of democracy in 1990, Nepal has adopted a trend to give judicial power only to the courts of law and independent tribunals, and amendment to the laws providing judicial power to the CDOs have been made to a large extent. Importantly, the bill on the penal code submitted to the then legislature-parliament proposed to curtail the judicial power of the CDOs in criminal cases and make those cases to be tried and disposed only by the courts of law. Likewise, the Supreme Court, in a writ (Ambar Bahadur Raut vs. Nepal Government), ordered the government to study as to what kind of cases should be given to the administrative officers and what cases should be given to specialized courts and tribunals. A committee formed by the GON has submitted its report which has been forwarded to the Nepal Law Commission to initiate the drafting in order to make necessary changes in the existing legislation as per the report. Besides this, the government provides a three-month judicial training to the CDOs in order to maintain fairness, due process and rule of law while trying and disposing the cases. The GON is committed to making necessary changes in the laws that grant judicial power to the administrative officers as per the verdict of the court.

57. The provision of the Children Act, 1992 in relation to the criminal liability of a child can be classified under three categories. The first category is age of absolute immunity from criminal and civil liability that applies to the child below 10 years of age. The second category is age of quasi-liability for the child between the age of 10 and 14 years and the third category is age of complete liability for the child above the 16 years of age. The GON has drafted a new bill on children to replace the previous one with the provision of defining a child as a person below 18 years of age. So far as the question of raising the age of criminal liability is concerned, the GON has not planned to change the law accordingly.

58. The measures taken to strengthen the juvenile justice system can be mentioned as follows:

(a) Enactment of the Children Act, 1992 in order to protect the interest of children;

(b) The rights of the child as fundamental rights guaranteed by the constitution;

(c) Ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in Armed Conflict;

(d) Ratification of the Convention concerning the Abolition of Forced Labour (ILO Convention No. 105);

(e) Ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;

(f) Establishment of the juvenile justice coordination committee;

(g) Formulation of the standard for operation and management of residential child care homes.

(h) Establishment of child correction homes;

(i) Recruitment of child rights officers in 50 districts;

(j) Enactment of the Juvenile Justice Regulation in 2006;

(k) The programme for strengthening juvenile justice already operational in 32 districts.

(l) Formation of juvenile benches in all district courts;

(m) Training programme for police personnel, judges and law professionals on child rights issues;

(n) Segregation of juvenile offenders from adult offenders;

(o) No trial of cases without the representation of lawyer;

(p) Non-application of disqualification where a child is sentenced;

(q) No severe punishment;

(r) The punishment of imprisonment as a last resort.

59. As per the provision of the Children Act, 1992, it is totally prohibited to hold a child, either suspect, accused or convicted in a police custody or prison in the course of pre-trial, during trial or after the conviction. The child must be held in a correction home or any centre other than police custody and jail or prison.

## Refugees, asylum seekers and internally displaced persons (arts. 2, 7, 13, 16 and 26)

60. Any person including recognized refugees and asylum seekers can enjoy the rights and liberty as provided by the prevailing constitution and laws in Nepal. The GON always respects and protects the rights of persons guaranteed by the constitution and law. In the case of violation of any right, the person has the right to constitutional and legal remedy. Though Nepal is not a party to the Convention Relating the Status of Refugees, 1951 and its 1967 Protocol, it is committed to respecting the principle of *non-refoulment* which is for the protection of refugees from being returned to a place where their lives or freedom could be in jeopardy. The Extradition Ordinance promulgated in 2012 prohibits the extradition of a person if he/she is likely to be a victim of physical or mental torture in the requesting State. It has pursued the policy not to expel, deport or extradite any person to the State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture or death. Similarly, the GON would like to reiterate that Nepal does not allow its territory to be used against its neighbours or any other country. Anyone found in violation of the immigration laws or other laws is dealt with in accordance with the law of the land.

61. Though Nepal has no specific law on refugees and asylum seekers, these matters have been regulated under immigration and extradition legislation. It is well known that refugees from various countries such as Bhutan and Tibet Autonomous Region of the People's Republic of China have been sheltered in the territory of Nepal. These people can exercise their rights and liberties without violating the domestic law. Refugees are bound to abide by the laws of the host country also. The Immigration Act, 1992 which regulates and controls the entry of foreigners in Nepal and their stay as well as departure must be followed by all including refugees and asylum seekers.

62. The measures taken to ensure the safe return of internally displaced persons and facilitate their rehabilitation and reintegration, including the return of their land and property are as follows:

(a) Formulation of the national policy on internally displaced persons, 2006;

(b) Guideline on relief and facilities to be provided to internally displaced persons and their families due to conflict, 2006;

(c) Guideline on the operation of employment/self employment service for internally displaced persons, 2011;

(d) Decisions made by the Council of Ministers for rehabilitation, education, immediate relief, and special package of rescue for the victims;

(e) Skill development and income generation training for at least one female member per displaced family;

(f) Formation of the steering committee led by the Home Minister;

(g) Formation of a central programme coordination committee led by the Chief Secretary;

(h) District coordination committees led by the Chief District Officers;

(i) Internally displaced persons identity card distribution committee in each district;

(j) The GON has succeeded in creating an environment where the internally displaced persons due to the conflict are returning to their homes and living with dignity including by reclaiming their land and occupied property. These people are carrying out their normal activities without hindrances.

## Freedom of expression, right to peaceful assembly, freedom of association and freedom of conscience and religious belief (arts. 2, 18, 19, 21, 22 and 26).

63. The GON has not created any obstacle or hindrance to the human rights defenders in the performance of their duties. As a democratic government, it always respects, protects and fulfils the rights of each person guaranteed by constitution and laws. Journalists and human rights defenders are freely exercising their rights, and the allegation of physical attack, death threats and reprisals by security forces is false and fabricated. The GON is committed to taking legal action against the perpetrators involved in such activities. A victim may lodge complaint to the competent body stating the violation of human rights by any person including security forces, and the complaint is handled as per the existing laws. So far as the activities of the Tibetan refugees are concerned, they are free to enjoy the rights and liberty in accordance with the prevailing law but when any act or activity carried out by them goes against the existing law and may undermine the friendly relationship with Nepal's neighbour, it is the legal duty of the government to take actions as provided by law which cannot be termed as violation of human rights.

64. Nepal is a secular State and the Interim Constitution provides the right to religion to each person including a non-national. The right to profess, practice and preserve one's own religion as handed down from ancient times paying due regard to social and cultural tradition is a fundamental right. Every religious denomination has the right to maintain its independent existence and to manage and protect its religious places and trusts. The right to religion does not mean that a person shall be entitled to convert another person from one religion to another and to act anything that may infringe upon the religion of others. Each

person is entitled to convert his/her own religion voluntarily. The constitution prohibits forceful proselytizing which is compatible with human right standard. As a multi-ethnic, multilingual, multi-religions and multicultural country, Nepal has guaranteed the religious freedom of each person as well as religious denomination. The State has not imposed any limitation on the religious freedom of any person or religious community including religious minorities.

## Birth registration (arts. 16, 24 and 26)

65. The GON started birth registration programme in 1971 to maintain records of birth, marriage, migration, death and divorce of all citizens and for this the Birth, Deaths and Other Personal Events Registration Act, 1976 and it's Regulation, 1977 have been enacted. The constitution and laws guarantee the right of identity to each child. Though birth registration of children has been gradually increasing, it is still in low number basically due to lack of awareness particularly in villages where most children are born at home. To cope with this problem, the GON has launched the campaign of birth registration since 1990. Likewise, it is thinking of introducing a system of compulsory submission of birth certificates for school enrolment and other purpose. Following the amendment of the Birth, Death and Other Personal Events Rules, the mother of a child is allowed to register the child even when the father of the child is absent. Likewise, the GON has published birth registration promotional audio-visual materials in various local languages. Children's clubs have been involved in raising awareness through street plays and door to door visits. There are local registers in all village development committees and municipalities. The Ministry of Federal Affairs and Local Development is launching a massive campaign for this.

## Dissemination of information relating to the Covenant (art. 2)

66. The International Covenant on Civil and Political Rights and its Optional Protocol have been translated into Nepali language and are available on the website of the MoLJCAPA and Nepal Law Commission. A committee was formed by the Ministry of Home Affairs, with cross-sectoral participation, to prepare the present Report upon holding consultations with a range of stakeholders. In this course, the committee held extensive discussions and dialogues with government institutions, national human rights institutions including the NHRC, and various civil society actors including the media and non-governmental organizations (NGOs). A series of interactions were also held on the contents of the Report.